

# **MONTANA DEPARTMENT OF TRANSPORTATION**

## **CIVIL RIGHTS BUREAU**

### **LABOR COMPLIANCE MANUAL**



## Table of Contents

(Asterisk following the entry denotes an associated form in the FORM section)

Acronyms .....	1
20% Rule .....	1
90% Completion Rule .....	1
Additional Classification Request .....	2
Apprentices .....	3
Audits .....	4
Benefit Plan Certification .....	4
Bona Fide Trust.....	5
Bulletin Boards .....	5
Classifications .....	6
Complaints.....	7
Conglomerate or Corporate Firm Payrolls .....	8
Covered Work .....	8
Conversion Codes .....	9
Certified Public Accountants.....	10
Deductions.....	10
Demolition on Right of Way.....	11
Duplicate Classifications .....	12
Final Labor Certificate (FLC) .....	12
Fringe Benefits .....	13
Garnishment of Wages .....	14
Labor Compliance Reviews.....	14
Labor Training.....	15
LC-1 – Labor Compliance Spot Check.....	15

LC-3 / Engineers Payroll Check Sheet .....	16
Legislative Audits .....	17
Liquidated Damages .....	17
MLMA.....	18
Overtime .....	18
On System/Off System Projects.....	19
On-Job-Trainees .....	20
Owner –Operator .....	20
Payroll Calculation Formula.....	21
Payroll Forms – WH 347.....	22
Progress Payment Withholding.....	23
Recording Workers on Payrolls .....	23
Requests for Payrolls .....	24
Sex and Wages .....	25
Shifting.....	25
State Funded Projects (SF).....	26
Site of Work.....	26
Statement of Compliance .....	27
Supplemental Payrolls .....	28
Special Provisions (FHWA-1273) .....	28
Subcontracts .....	29
Timely Submission .....	30
Unions.....	30
Wages.....	31
Wage Petitions .....	32
Wage Rates .....	33
Work for Multiple Contractors .....	34
Work on Multiple Projects.....	34
Work Time Begins.....	35

Workers' Diaries .....	36
Working Foreman.....	36
Zone Pay .....	37
Forms .....	38

These are the forms that are included in the section Forms:

- 90% Completion Notification\*
- Additional Classification\*
- Final Labor Certificate\*
- LC-1 Payroll Spot Check\*
- LC-3 Engineer's Check Sheet\*
- Payroll Form – WH 347\*
- Statement of Compliance\*
- Special Provisions\*
- Wage Rates (sample)\*

## **Acronyms**

CFR – Code of Federal Regulations

CRB – Civil Rights Bureau

DOL or DOLI – Montana Department of Labor and Industry

FHWA – Federal Highway Administration

MDT – Montana Department of Transportation

MCA 000-00-00 – Montana Code Annotated

MLMA – Montana Labor Management Alliance

USDOL – United States Department of Labor

## **20% Rule**

This rule is sometimes referred to as the “Deminimus Rule”.

The 20% rule states that an employee who works in excess of 20% of the time in more than one work classification must be paid separate wage rates or the higher of the two wage rates.

The 20% rule is also applicable to truck drivers delivering fill or product from a non-covered site. Since they spend less than 20% of their time in a forty-hour workweek on the project site their wages are not covered by the Davis-Bacon wage rates in the contract.

## **90% Completion Rule**

The Construction Bureau notifies the Civil Rights Bureau (CRB) when a project is 90% complete. The notification triggers a payroll file review by the Civil Rights

Bureau. As a part of the review process, the CRB provides the EPM with a document indicating the status of payroll submissions and requesting information about contractor payrolls.

This procedure was enacted to facilitate CRB closing the project file in a timely manner. See form section for a sample of the 90% Completion Form.

### **Additional Classification Request**

Occasionally the prevailing wage rates included in the contract do not contain the classification and wage/fringe rates, which reflects the work of a contractors' employee. The contractor is obligated to request a determination from the CRB for a classification and rate of pay for the individual. A form can be retrieved from the MDT website. See FORM Section of this document.

The requesting contractor fills out and signs the form, then sends it to the CRB. The CRB will review it and forwarded to the USDOL. If a subcontractor is requesting the additional classification, the form should be sent through the prime contractor. A thirty to forty-five day delay is typical before receiving a response from the USDOL.

In the interim, the contractor is left with the issue of what to pay the worker(s) for which a classification and rate of pay a determination has been requested. Pay for the worker(s) is a "best guess" situation and one that should be openly discussed with those affected. Certainly the contractor is in the position of not knowing if the wages being paid the workers during the determination wait period are above or below the rate set in the final decision.

When a USDOL determination is made, the CRB notifies the contractor. If the wages paid the workers is less than that in the determination, the employee must be paid the difference. If the contractor has overpaid the workers the issue of difference is between the worker(s) and the contractor.

## **Apprentices**

Apprentices are engaged in a USDOL endorsed training program. Apprentices may be paid a percentage of the journeyman rate of pay based on the number of training hours accumulated. Contractors employing apprentices on federal-aid highway projects will submit copies of the employees' apprenticeship papers to MDT field staff with copies forwarded to CRB. Copies of apprenticeship papers can be obtained from the Montana Bureau of Apprenticeship and Training at 444-3556.

Apprenticeship papers authenticate that the employee is engaged in a training program. The apprenticeship papers set the percent of the journeyman wages the individual is to be paid. Apprenticeship papers will be included with the first payroll on which the apprentice appears.

Apprentices may be used to fulfill contractually required training assignments (OJT) on federal-aid highway projects. Apprentices are to be paid their apprenticeship-training pay scale.

## **Audits**

The Civil Rights Bureau is charged with the responsibility to assure workers on federal-aid highway projects are paid fully without rebate. The Copeland Anti-kickback Act states that a contractor cannot make a worker pay for the privilege of employment. As a result CRB audits selected contractors payrolls to see if the workers are being paid appropriately for the work they performed.

The audits require the contractor to provide payroll information and copies of both sides of payroll checks or direct deposit advice documents from the workers bank. These random spot checks are undertaken to meet the FHWA assurances that MDT will enforce the federal laws and regulations.

## **Benefit Plan Certification**

In some cases contractors are initiating “partially funded” plans. In the absence of USDOL authenticating these plans as bona fide, CRB is requesting that the contractor certify that their partially funded plan meets the four criteria in 29 CFR 5.8. In effect the contractor swears the unfunded plan is actuarially sound and bona fide.

A certification form attesting that the unfunded plan is bona fide and actuarially sound is to be signed by a company officer, and witnessed by a notary public. That document is to be sent to the CRB.

See: Certification of Benefit Plan document in the Forms Section.



## **Bona Fide Trust**

Contractors have the choice of where fringe benefits are paid. When a contractor elects to pay employee benefits to a fund, plan or program that fund or plan has to be bona fide. Bona fide is defined as an irrevocable trust account of actuarial soundness.

Contractors submitting payrolls on federal-aid highway projects whose employee benefits are paid to a fund must record the name of the fund or plan under the “Remarks” section of the payroll certification sheet. The CRB is responsible for authenticating that the recorded fund or plan is bona fide.

## **Bulletin Boards**

Contractor bulletin boards for labor purposes must contain the following information:

- ❑ FHWA-1273
- ❑ Wage Rate Information Poster
- ❑ Dual Employment Notice
- ❑ Wage Rates for the project

Stationary bulletin boards are typically mounted on the outside of the contractors’ construction trailer or on semi-permanent stand alone structures located where employees typically gather. Multiple contractors may use the same bulletin board for information specific to their firm. In all cases the materials on the bulletin board must be accessible to the employees.

Stationary bulletin boards may be three ring binders, mounted, designated and contained in an accessible weatherproof container on a semi-permanent structure.

Contractors whose work is considered mobile i.e. Guardrail, Fencing, and Striping may maintain a three ring binder in the supervisors' vehicle as a bulletin board. In these cases the binder must be known to the employees, be accessible to the employees, contain the required information and be on the project at all times.

## **Classifications**

The term laborers and mechanics refer to all workers performing work on a federal aid project. Laborers and mechanics are classified by the nature of the work they perform, the area in which the work is performed and the level of complexity of their work. Submitted payrolls must accurately reflect the classifications in which the employee was engaged.

Typically classifications are abbreviated on payrolls. Abbreviated classifications should be easily identified and always reflect the level of work performed. For example, a Laborer, group 3 might be represented as:

- ❑ Lab-3; or
- ❑ L-3

See also "Conversion Codes"

If a worker is incidentally engaged in work outside her/his classification for less than 20% of a workweek they may be paid at a rate for the classification in which

they work 80% of the time. This is known as the “Deminimus Rule.” (see 20% Rule)

In general practice, the contractor should pay the worker in the classification in which the work is being performed.

## **Complaints**

Labor complaints have at their root three general causes. The first is human error in the payroll process. The second is a lack of full communications between the contractor and the worker. And, the third is a legitimate disagreement about hours worked, rates of pay or benefits received.

Individual workers are encouraged to maintain their own records and work with their supervisor to resolve differences in times as those instances occur. Workers are cautioned against signing their time card if they disagree with the hours, classifications or rates of pay. If they “must” sign, workers are urged to sign with a notation of “under protest” or “with exception”.

The contractors’ supervisory personnel should understand that their power to hire and fire may generate a workers fear that complaining about time & wages may lead to firing. Firing an individual for exercising their right as an employee is retaliation and is against the law. Supervisors must act in a way so employees are comfortable questioning their hours, classifications and rates of pay. Discussion about hours and wages should be conducted with mutual respect up to and including the workers right to appeal a supervisor’s accounting.

Workers having labor complaints are first encouraged to try to resolve them through internal processes with their employer. If the worker wishes to appeal

the decision or inaction of their employer, the worker may do so by contacting CRB. CRB may be contacted directly or through a MDT inspector.

Monthly estimates or project final payments will not be made if there are unresolved labor complaints. It is therefore in the best interest of the prime contractor to insure that their payroll processes are complete and accurate and that they monitor their subcontractors for the same.

### **Conglomerate or Corporate Firm Payrolls**

Conglomerate or corporate firms may wish to have their individual subsidiary companies bid individually on specific projects. While it is permissible to do so, those companies cannot trade employees back and forth between companies during the life of a specific project unless those employees are included on the payroll of a firm with an approved contract or subcontract. If “sister” companies are working on the same project appropriate subcontracts must be in place and employees of the sister companies must be shown on the appropriate company’s payroll.

All paperwork submitted by the firm must bear the name and address of the company shown on the formally signed prime contract or subcontract.

### **Covered Work**

The Davis-Bacon Act and its’ regulatory statutes apply to any federal-aid highway project whose award is \$2,000.00 or more.

Covered work is also the term applied to those activities which are conducted adjacent to or virtually adjacent to the project, and; the purpose of which is dedicated to or nearly so to the project. Covered work simply means the workers are paid the prevailing wages in the contract. Not covered work means workers are paid “general” wages at rates specified by the contractor.

The question of covered work most often is an issue prior to the submission of a bid by a contractor. And the issue most frequently revolves around the placement of a pit and/or plant in relation to the project boundaries. The MDT District Construction Supervisor has the authority to and the responsibility for determining if the work conducted at a proposed pit or plant will be covered work.

The District Construction Supervisor (DCS) must consider if the site is adjacent or virtually adjacent to the project AND if the site is dedicated or nearly so to the project. If the DCS can answer yes to both criteria the work is covered; if the DCS answers no to either or both, the work is not covered.

See: Site of Work

## **Conversion Codes**

Some contractors elect to use work classification codes that are different than those shown in the contract. It is permissible to do so as long as a conversion sheet identifying the code is provided with the first payroll submitted. For example I-103 equals a Laborer – group 3.

## **Certified Public Accountants**

It is permissible for contractors to employ independent accounting firms or certified public accountants to prepare payrolls.

It is important to determine whether the accounting firm or CPA has experience working with certified payrolls required for federal-aid highway projects. It is prudent to provide the accounting firm with contact information so they may call for assistance as they encounter payroll problems. CRB is always willing to provide information or training to contractors or accounting firms submitting certified payrolls for federal-aid highway contracts.

## **Deductions**

There are two types of deductions, voluntary and involuntary.

### **Voluntary Deductions:**

- ❑ Are authorized in writing and signed by the employee. These may include such things community chest deduction, paycheck advances, travel advances, etc.
- ❑ These written authorizations must include the following:
  - Employee's name and signature
  - The amount of the deduction
  - The duration of the deduction
  - The reason for the deduction
- ❑ Written authorized deductions must accompany the first payroll on which the deduction is made.

#### Involuntary Deductions:

- ❑ Deductions authorized by the court (i.e. Garnishments) that need no confirmation by the employee.
- ❑ Legal papers authorizing the deduction are to be retained by the contractor and are NOT to be forwarded to MDT.
- ❑ Are noted in the “Remarks” section of the payroll certification sheet and contain:
  1. Employee's name
  2. Amount of the deduction
  3. Duration of the deduction
  4. Reason for the deduction
- ❑ Fringe benefits may be deducted from an employee's wages up to the published dollar value only if the amount of the deduction is irrevocably deposited in a bona fide trust account or health plan. Any fringe benefit amount not deducted and deposited in a third party managed plan must be paid to the worker as a part of his/her cash wages.
- ❑ There are three legal deductions requiring no authorizing document:
  1. FIT (Federal Income Tax)
  2. SIT (State Income Tax)
  3. FICA (Social Security)

#### **Demolition on Right of Way**

Demolition of structures on MDT Right of Way is considered a “salvage” operation. In it's' application salvaging materials from a project right of way is the reverse of a vendor or suppliers' delivery. It is non-covered work and as non-covered work, it is not subject to Davis-Bacon prevailing wage rates.

## **Duplicate Classifications**

Occasionally the wage rates have duplicate classifications. Why they exist and having one of them removed is a complicated, time-consuming task that CRB undertakes with the USDOL. Sometimes there is a legitimate reason to have both exist in the wage rates. For example:

The classification Grade Setter appears both in the Laborer, Group Four category and in the Operator, Group Two category. Because these classifications of grade setters set different rates of hourly wage, they are sometimes in dispute. This duplication has not been addressed by USDOL and CRB is providing the following guidance:

Grade Setters jumping stakes and working in conjunction with the motor patrol should be paid the operator rate. Grade setters working with a survey crew should be paid the laborers rate. Employees who belong to the operators union typically are paid at the operator rate for union contractors but are paid at the laborer rate by non-union contractors.

## **Final Labor Certificate (FLC)**

A final labor certificate is an assurance that all contractors on a given project have submitted complete and accurate payrolls for all the time they were working on the project. The FLC also is a declaration that there are no pending labor issues on a particular project. The FLC is issued by CRB and forwarded to the Construction Bureau only after a 90% complete payroll audit has been conducted and all payroll issues have been resolved.

See: 90% Completion Notification



## **Fringe Benefits**

The contractor determines fringe benefit allocation. The contractor may elect to pay fringe benefits:

- ✓ into a fund or plan on behalf of the employee,
- ✓ pay the fringe benefits in cash to the employee
- ✓ or some combination of the two.

In any respect, the employee must be informed in writing about how his/her fringe benefits are to be distributed and how she/he may access monies not paid directly to him or her.

Under the Davis-Bacon Act, wages and fringe benefits are considered a part of a “wage package” that is to be paid “irrevocably” to the employee. It is therefore required that workers be informed where their money is being placed and how the workers can access their money if and when they want it.

It is the contractors’ responsibility to:

- ❑ Indicate on the statement of compliance of each payroll if the fringe benefits are being paid in cash, to a fund, or some combination of the two; and,
- ❑ Record under the “Remarks” section on the Statement of Compliance the name (if any) of the plan or fund into which employees monies are paid.

It is MDT’s responsibility to assure:

- ❑ The distribution of fringe benefits are as indicated on the Statement of Compliance; and,

- The name of the fund or plan into which employees monies are paid is recorded under “Remarks” on the Statement of Compliance.

## **Garnishment of Wages**

Garnishment of wages is the legal action taken by a state entity to assure a worker pays legal debt. It obligates the workers’ employer to withhold and forward a portion of employees’ earnings for payment of the debt. Legal papers are served on the employer to effect the garnishment of a worker’s wages.

The contractor who has been served garnishment papers is obligated to note the garnishment under “Remarks” on the payroll Statement of Compliance. The name of the individual and the amount of the garnishment shall be recorded and the employee shall be notified of the legal action (garnishment).

Copies of the legal notification of garnishment are to be retained in the contractors’ records. The legal notification is NOT to be attached to payrolls or forwarded to MDT/Civil Rights Bureau.

## **Labor Compliance Reviews**

Labor compliance reviews are conducted to enforce the Copeland Anti-kickback Act. Labor compliance reviews are undertaken to assure that contract prevailing wages are being paid workers without unauthorized deductions or rebates from the wages of workers going to the contractor. Selected contractors are required to submit copies of timecards, payrolls and both sides of canceled payroll checks to the CRB for auditing.

## **Labor Training**

Civil Rights Bureau staff will conduct labor training for MDT staff and contractors on an “as needed” basis. Additionally, there is a yearly “Payroll” training provided to MDT employees and contractors, generally held during the first quarter of each calendar year as part of the MDT Construction Bureau Conference.

Individual contractors or MDT Construction Bureau field staff wishing to have specific training for their crews should make arrangements by contacting the Civil Rights Bureau. There is no fee for this training.

## **LC-1 – Labor Compliance Spot Check**

The LC-1 is a form utilized in the process of conducting an EEO/ Labor Compliance Spot Check. MDT field staff interviews the contractors’ employees monthly beginning with the first month the prime and each subcontractor are on the project site.

The spot checks are done to determine if the contractors’ employees are aware of their rates of pay, their classification, where their fringe benefits are being paid, how to access their fringe benefits, the location of the wage rates for the project and provide them an opportunity to report any payroll issues to the state inspector.

The MDT inspector compares the employee’s names on the LC-1 form with the names of the contractors employees on the contractor’s payrolls for the same work week to determine if all the workers on the project are reported on the

payroll and that the reported workers wages are properly represented in the rate of pay on the payroll. The MDT inspector, after comparing the LC-1 to the payroll, attaches the LC-1 to the corresponding payroll and forwards the entire document to the Civil Rights Bureau.

Any discrepancy noted in the LC-1/payroll comparison is recorded in the "Remarks" section of the Payroll Cover Sheet by the state inspector for follow-up action by the Civil Rights Bureau.

LC-1 Spot Checks are to be completed on "off-system" projects for the EEO portion of the inquiry. These "off-system" projects most often are bridge projects. Labor rules are those of MT-DOL but EEO regulations still apply, so spot-checks should continue to meet that federal assurance.

See "Forms" section for a copy of the LC-1 form.

### **LC-3 / Engineers Payroll Check Sheet**

The Engineers Payroll Check Sheet is completed by the MDT Project Engineer. It is a cover sheet that is stapled to the front of each payroll that is to be forwarded to the Civil Rights Bureau. The cover sheet is an outline of the payroll checking responsibilities of the field staff. It is a guide for field staff about the items that need to be verified on the payroll in addition to confirming the correct gross wage for the contractors' employee.

In the process of checking payrolls the rule is that if the gross dollar values or deductions are incorrect, request a supplemental payroll from the prime contractor. If checklist items are incorrect or omitted call the contractor and make the non-monetary corrections from the telephone conversation. Any

corrections or pending actions should be noted in the “Additional Comments” section of the check sheet.

MDT personnel are directed not to write on the original payrolls. Doing so invalidates the payroll as evidence in court. Write corrections in the comment section of the LC-3.

See Forms section for a copy of the LC-3.

### **Legislative Audits**

In addition to federal audits, the Civil Rights Bureau is subject to audits from Financial Compliance Auditors of the Legislative Audit Division. Payroll processes and products are scrutinized for consistency, completeness and accuracy. These audits are instructive as they provide a separate perspective on how CRB conducts its labor compliance business.

### **Liquidated Damages**

Liquidated damages may be assessed by CRB on any contractor for underpayment of overtime wages to any worker on a federal aid highway project. Liquidated damages are assessed in the sum of \$10.00 for each calendar day on which each employee was permitted or required to work over forty hours in a work week and paid in accordance with the law. Reference 29 CFR 5.5 (b)(2).

## **MLMA**

The MLMA is a joint labor-management group that audits projects for compliance with negotiated agreements, and wages paid workers. The MLMA charter from the USDOL includes the authorization for contractors to deduct \$0.05 from workers wages to fund the program. The MLMA authorization for deductions must be renewed yearly.

MLMA has been informed that their representatives wishing to access a project site must have the permission of the contractors' project superintendent. CRB has additionally requested that MLMA notify the EPM or the state inspector on the construction site of their presence on the project.

MLMA may not view payrolls on the project site; however, they may make a written request for payroll review to the CRB.

See: Payroll Forms.

## **Overtime**

Overtime is defined as all the time worked over 40 hours in a workweek.

Overtime is calculated at one and one-half the base rate of pay. Another way to think of paying overtime is to pay the base rate of pay for the total hours worked plus a premium rate of one-half the base rate times the overtime hours worked. Any zone pay is added to the base before overtime is calculated. Fringe benefit amounts are never added to the wage rate when overtime is to be calculated.

If an employee works on two different projects in the course of one workweek, overtime must be paid on the project where the 41<sup>st</sup> hour occurs.

See: Payroll Calculation Formula

### **On System/Off System Projects**

On system projects are all those roadways except those classified as local roads or rural minor collectors. Contractors must submit Davis-Bacon certified payrolls for any federal-aid highway projects on an “On System” roadway if the project amount is \$2,000.00 or more.

Contractors must retain in their own records payrolls for work conducted on “Off System” projects if the project amount is \$2,000.00 or more. These “off-system” projects are subject to “Little Davis-Bacon Act” administered by the Montana Department of Labor.

Both on system and off system projects that are federal-aid funded are subject to EEO regulations if the dollar value of the project is \$10,000 or more.

LC-1 Spot Checks on “off-system” projects apply to EEO regulations not to labor. Spot Checks should continue monthly for contractors on the project. Labor issues reside with the Montana Department of Labor.

See: LC-1 Payroll Spot Checks

## **On-Job-Trainees**

On-Job-Trainees wage rate may be the full journeyman rate for the work classification or be on a sliding scale. How an OJT trainee is to be paid is determined by the contractor.

The sliding scale is as follows: 60% of the classification journeyman wage for the first 250 hours; 75% of the classification journeyman wage for the next 125 hours; and 90% of the classification journeyman wage for the next 125 hours. The trainee is to receive full journeyman wages for all work hours over 500.

The most frequent problem encountered with OJT trainees' wages is when the trainee is on a sliding scale. It is common for the contractor and MDT inspectors to forget to monitor the trainee's hours. Often the trainee is being paid less than their training time requires.

## **Owner –Operator**

The designation owner-operator applies only to truck drivers. Individuals who own and operate their own trucks can be designated owner-operator. The name of the person driving the truck must be on both the individual's driver's license and the title of the truck. These owner-operators must be shown on the payroll. Rates of pay do not have to be shown.

Any individual, other than the owner, who is driving an owner-operator's truck, must be paid Davis-Bacon wages and appear on a contractor's payroll.

Individuals may lease a truck and be considered an owner-operator. The lease must be in the name of the driver and the lease agreement must be unrestricted



as to how & where the truck may be used. CRB has as a general practice reviewed lease agreements for “owner-operators” to determine if the agreement is “unrestricted.” A copy of the lease agreement must be provided to the MDT Project Manager who will in turn forward a copy to the CRB.

Contractors employing owner-operators should be cautioned that the designation “owner-operator” does not necessarily qualify that individual as an independent contractor. The contractor is encouraged to investigate Montana State Law and court decisions regarding “independent contractors.”

### **Payroll Calculation Formula**

There are many different ways to mathematically compute wages for employees. If the gross wage value is correct, how it is calculated is not an issue. However, CRB in consultation with the USDOL has developed a payroll calculation formula, which is a helpful tool for many payroll clerks, and MDT field staff who calculate or check payrolls.

FORMULA:

$(WR + Z) - (AS + VP) \times T.Hrs.$	= REGULAR WAGE
$\frac{1}{2} (WR + Z - VP) \times OH$	= OVERTIME WAGE
$(F + AS) \times T.Hrs.$	= BENEFITS
$(VP \times T. Hrs.) + \frac{1}{2}(VP \times OH)$	= VACATION PAY

WR = wage rate / Z = zone / AS = amount shifted / VP = vacation pay / THrs. = total hours / OH = overtime hours / F = fringe benefits

This formula has been successfully integrated in an Excel Spreadsheet and is available to individuals upon request. Contact the CRB for an electronic version of the formula.

See: Shifting.

### **Payroll Forms – WH 347**

The Code of Federal Regulations states that payrolls may be submitted in any format as long as the required information is represented on the payroll; 29 CFR 5.5 (a)(3). Information required on the submitted weekly payroll includes:

- ☐ Name, address and social security number of each worker.
- ☐ Correct classification for each worker and hourly wage rates including fringe benefits
- ☐ Daily and weekly number of hours worked.
- ☐ Deductions made and actual wages paid.
- ☐ Signed Statement of Compliance indicating the payroll is complete and accurate.

The regulations may be met through utilization of Optional Form WH-347. This document and the certification sheet included are particularly convenient for small contractors who do not have computerized payroll systems. In any case, all the information requested on the payroll form should be honored to meet the compliance statement that the payroll is complete and accurate.

Employee addresses and social security numbers must appear on the first payroll entry for each employee.

See Forms section for samples of both the certification sheet and the optional payroll form WH-347.

### **Progress Payment Withholding**

Withholding of progress payments to contractors is a tool CRB may use to assure compliance with labor regulations. Occasionally it is a necessary device to motivate the contractor to resolve labor complaints or payroll issues in a timely manner. Most often withholding progress payments is invoked to assure there is money available to cover the underpayment of workers on a project.

In like manner withholding of progress payments to subcontractors by the prime contractor can be an incentive to the subcontractor to submit complete and accurate certified payrolls in a timely way.

### **Recording Workers on Payrolls**

Every person from the contractor's firm who performed work on the project in a given workweek should be so recorded on the payroll form. That includes workers, supervisors, managers, owners, and owner-operators. Salaried individuals and owner-operators should be classified by their title i.e. Superintendent or Foreman; their days and hours on the project should be recorded but their rate of pay is not required.

The first time a worker appears on a payroll, contact information for that person should be recorded. Contact information is considered to be the address where

they will receive their Federal Wage and Earning Statement (W-2). In addition the individuals Social Security Number should be recorded in the name block.

See: Requests for Payrolls

See Supplemental Payrolls.

### **Requests for Payrolls**

Occasionally, the union or competing construction companies will request copies of payrolls. Any request for payrolls should be directed to the Civil Rights Bureau. The offices of the Engineering Project Manager are not authorized to provide copies of payrolls. The Freedom of Information Act (FIA) makes the payrolls public information but the individual right to privacy assures the workers Social Security Number and ethnicity remains confidential. Therefore the CRB has taken the responsibility of purging confidential information from certified payrolls before honoring FIA requests.

Upon receipt of a written request for payrolls, the Civil Rights Bureau will:

- ✓ Notify the contractor that copies of their payroll have been requested.
- ✓ Make arrangements to have the payrolls copied (removing the social security numbers and ethnicity)
- ✓ Send the photocopy bill and the copied payrolls to the requesting entity.

## **Sex and Wages**

The Equal Pay Act of 1963 prohibits sex discrimination in payment of wages to women and men performing substantially equal work. Payroll persons should be working with the contractors EEO Officer to document that their firm monitors payrolls to assure the spread of wages is equal. This is sometimes referred to as “equal pay for equal work”.

## **Shifting**

Overtime wages must be paid using the prevailing wage rates before money is shifted.

Shifting is the term applied to moving money designated as wages to money designated as fringe benefits or vice versa. The Code of Federal Regulations defines wages and fringe benefits as a “wage package” and allows money to be moved between the two categories.

Shifting has generally occurred when the cost of a fringe benefit plan exceeds the allowable fringe benefit dollar figure recorded in the prevailing wages. Contractors' will on the first payroll when shifting occurs, define the amounts shifted for which classifications of workers. Contractor information about shifting will be noted in the “Remarks” section of the Statement of Compliance or by attaching a document to the Statement of Compliance, laying out the shifting plan. Shifting notification will accompany the first payroll on which shifting occurs.

## **State Funded Projects (SF)**

State funded projects are wholly funded by State of Montana dollars; there are no federal-aid funds included in the project. State funded projects do not require that payrolls be submitted to MDT. Labor regulations on state funded projects are enforced by the Montana Department of Labor (MDOL) and are referred to as the Little Davis Bacon Act. MDOL requests that payrolls be retained by the contractor and submitted to MDOL only when specifically requested by MDOL.

Information about State funded payroll requirements and/or the Little Davis-Bacon Act should be made to Montana Department of Labor at 444-1376 (TTY 444-5549).

## **Site of Work**

Site of work refers to a determination about whether a particular site is included in the federal-aid highway project. At issue is if the employees at the identified site are to receive Davis-Bacon wage rates. Generally, these determinations are made by MDT District Construction Supervisors (DCS) prior to the bid letting.

The DCS's use criteria established in an appellate court decision. The determination is made based on the following criteria:

- ☐ Is the site adjacent or virtually adjacent to the project?
- ☐ Is the site dedicated or nearly so to the project?

The appellate court decision stated that both criteria have to be affirmative (yes) for the site to be determined "covered" by the wage rates prevailing on the project. The court did not define the terms adjacent, virtually adjacent,

dedicated, or nearly so. The court said these determinations are to be made on a “case by case” basis.

See: Covered Work.

## **Statement of Compliance**

Each submitted payroll must have an attached certifying document. The document says in effect that every worker has been paid the full weekly wage earned, that the payroll is correct and complete, and that fringe benefits have been appropriately assigned. Willful falsification of any of the terms on the statement of compliance may subject the contractor to criminal prosecution.

The statement of compliance contains space for the contractor to record specific information relative to the payroll. A short list of topics includes: garnishments, name of fringe benefit fund, plan or program, shifting values, and conversion codes. Employee authorizations for deductions are typically on separate sheets and attached to the statement of compliance.

MDT has its' contract with the prime contractor. MDT has the obligation to check all payrolls for accuracy and completeness. It is the responsibility of the prime contractor to assure that payrolls submitted by subcontractors of any tier are complete and accurate before forwarding them to MDT.

See: Garnishments

See: Fringe Benefits

See: Shifting

See: Conversion Codes

## **Supplemental Payrolls**

Generally, supplemental payrolls are required if the wages paid individuals are incorrect. MDT field forces must contact CRB if the number and severity of errors and omissions on a contractor's payroll indicates fraud or incompetence.

MDT field forces are directed to communicate payroll concerns with the prime contractor about payroll issues with subcontractors. MDT has a legal contract with the prime and it is the responsibility of the prime contractor to monitor its' subcontractor payrolls for accuracy and completeness. Inaction or ineffectiveness by the prime to meet its' contractual obligation should be reported to CRB. Continued inaction or ineffectiveness may result in withholding of progress payments.

Information displayed on the original or supplemental payroll must match the check issued to the employee. Contractors may be asked to provide evidence that checks matching payrolls have been issued.

See: Audits

## **Special Provisions (FHWA-1273)**

Federal form FHWA-1273 contains the EEO and Labor special provisions required for federal-aid highway projects. The FHWA-1273 must be attached to all contracts and subcontracts for the project. It is the responsibility of CRB to ensure the prime contractor is in compliance with the special provisions, including the obligation of the prime contractor to monitor all subcontractors for



their compliance with the provisions. It is the prime contractors responsibility to include the FHWA – 1273 in each subcontract.

See the Forms Section for a copy of the FHWA-1273

## **Subcontracts**

Any subcontract awarded by the prime contractor on a federal-aid project will have attached a copy of the FHWA-1273 and the prevailing wage rates for the federal-aid highway project. It is the responsibility of the prime contractor to monitor subcontractors for and enforce the provisions in the FHWA-1273. In like manner the subcontractor will monitor second tier subcontractors and so forth. The prime contractor is held responsible for all labor violations on a federal aid contract.

## **Subcontractor Payment**

- A prime contractor must pay subcontractors within seven (7) days of receiving an MDT progress payment. Reference: MCA 28-2-2103.
- Subcontractors must provide a billing statement for work performed or products delivered at the time of delivery or work completion to the prime contractor,
- Subcontracts should not state a time period other than the seven days stated in the statute.

## **Timely Submission**

An original and one copy of a certified payroll should be submitted to the MDT Engineering Project Manager within seven days following end of the workweek. The prime contractor representative charged with monitoring contracts must ensure all subcontractors on the project are honoring the timely submission obligation.

Prime contractors may elect to have subcontractor payrolls sent to the prime or directly to the MDT Engineering Project Manager with copies to the prime. Whichever procedure is to be used should be established during the preconstruction conference. Prime contractors electing to have subcontractor payrolls sent to the MDT-EPM may be losing an opportunity to monitor those payrolls for timeliness, completeness and accuracy.

## **Unions**

Some contractors have negotiated agreements with labor unions. Union signatory contractors with agreements that negatively impact the wage & payroll provisions in the FHWA-1273 should notify MDT no later than the submission of the first payroll.

Union representatives may from time to time, with permission of the contractor's project superintendent, conduct spot checks on a project. These are generally through the auspices of Montana Labor-Management Alliance.

Occasionally, a union representative may request copies of payrolls from MDT field forces or contractors. The requesting party will be referred to CRB. CRB

will honor the requests following a protocol to ensure privacy rights of individual workers recorded on the payrolls.

Union representatives also petition contractors for adjustments to or increase in the prevailing wage rates. The petitions are presented to CRB for authentication before being forwarded to the USDOL. The CRB makes no recommendation to the USDOL regarding acceptance or denial. If USDOL finds the petitions uncontested the prevailing wages rates for the State of Montana will change. The wage rates prevailing in awarded contracts will not change through the life of the project.

See: Montana Labor Management Alliance

See: Requests for Payrolls

See: Wage Petitions

## **Wages**

Workers are paid hourly wages. These wages are interchangeably called Davis-Bacon Wages, prevailing wages, federal wages or contract wages. In their common use they all mean the same thing.

Wages are set in the bid document and the official prime contract. When the bid is accepted and the contract awarded they are officially referred to as Davis-Bacon Prevailing Wage Rates. It simply means that the contract wage rates are the same as those determined by the United States Department of Labor to exist in the Montana County where the highway project is located.

As an agency administering federal funds, MDT has assured the Federal Highway Administration that workers will be paid the wages contained in the

federal-aid highway contract. That means MDT/CRB must see that the workers are paid no less than the contract wage rate. It is acceptable for the contractor to pay a higher wage than the amount prescribed by the contract.

Davis-Bacon Wage Rates may change, but the wages rates, for any specific highway project, will be in effect over the life of the project.

See: Wage Petitions

## **Wage Petitions**

Union representatives petition contractors for agreement with proposed changes in the prevailing wage rates. The wage petitions have to contain the signatures of fifty percent of the contractors actively doing federal-aid highway construction the previous calendar year, and; the petitions have to reflect contractors who have done over fifty percent of the federal-aid awarded contract dollars in the previous calendar year.

CRB is charged with authenticating the wage petitions for completeness and accuracy and if found to be so, forward the petition to USDOL for a determination. MDT makes no recommendation to either approve or disapprove the proposed rates. If USDOL accepts the rates proposed in the petitions, the prevailing wage rates for the State of Montana will change. The prevailing wage rates existing in awarded contracts will however remain unchanged through the life of the project.

## **Wage Rates**

The four Davis-Bacon wage rates are:

- ❑ Building
- ❑ Heavy
- ❑ Highway
- ❑ Residential

The two most commonly used by MDT are Highway and Building. Highway wage rates are used for all federal-aid highway projects on all roadways except those classified as local roads or rural minor collectors. Building wage rates are used for the construction of buildings. The most common examples of buildings constructed are Motor Carrier Services (MCS) facilities (Scale houses) or “Rest Areas”.

MCS or rest area projects usually contain both sets of wage rates. In those cases the question often asked is, “For what work do the separate wage rates apply? The general operational answer is that building rates apply from a roof drip-line in and highway wage rates apply from a roof drip line out.

There are work circumstances that require determinations about which set of wage rates apply for a particular work circumstance. MDT project engineers are encouraged to contact CRB to discuss the issues and derive a consensus determination in these instances. USDOL guidance allows for case-by-case determinations to be made by the administering state agency but to maintain a semblance of statewide consistency, consultation is strongly suggested.

The contract prevailing wage rates must be attached to all subcontracts and are to be maintained and accessible on project bulletin boards.

## **Work for Multiple Contractors**

Workers may work for more than one contractor on federal-aid highway projects. Workers are required to be forthcoming about their multiple employments. Workers should report to both employers their multiple employment status. To not notify their employers, the worker causes the contractor to unintentionally make a false statement on their payroll certification form in the case of overtime payments. When an employee reaches the 41<sup>st</sup> hour in a work week that workers employer is responsible for paying overtime.

If a worker fails to report multiple employment situations they are in violation of 18 U.S.C. 1020. This is the “false statement” poster on the bulletin board. By not reporting multiple employers the worker is lying by omission, therefore subject to fine or imprisonment up to five years or both.

See: Work on Multiple Projects

See: Note under “Work on Multiple Projects”

## **Work on Multiple Projects**

Workers are not prohibited from working on multiple federal-aid projects. That work may be for the same or for different contractors. At issue in these cases are how hours are tracked for the purpose of calculating any overtime hours for the employee.

Workers must be paid one and one-half times their base wage for all hours worker over forty in a workweek. Unless there is a well-defined system for tracking all of the workers hours the worker may not receive the full wage to

which he/she is entitled. And, in the case of different contractors, the second contractor may not want to incur the overtime obligation. In any case the potential for problems to arise for the worker and the contractor is magnified with multiple project work.

Payroll clerks and project superintendents must be alert to the possibility of a worker being employed on multiple projects or for different contractors. If it happens, both the clerk and the superintendent have to be diligent in recording hours, working with the other firms' pay rolling persons and appropriately report the workers hours.

See: Work for Multiple Contractors

Note: Working on multiple projects or for multiple contractors may violate Disadvantaged Business Enterprise Regulations. For a clarification of this issue contact the Civil Rights Bureau, DBE Program Manager at 444-6331.

## **Work Time Begins**

On a federal-aid project, required duty or time on the project begins when the worker is at the specified place at the designated time. Davis Bacon only covers work performed on that actual construction site. It does not cover transport of equipment or personnel to the project site.

## **Workers' Diaries**

Construction workers are encouraged to maintain a project diary. They should record days, hours and classifications in which they work. A workers diary can help substantiate their claims in labor disputes.

Contractor representatives should sincerely consider worker concerns about wage and hour disagreements. Often the issue is secondary to how the worker is treated for being confused by, disagreeing with, or concerned about a wage/hour issue. An insulting, demeaning posture toward the worker frequently results in a generalized worker morale problem.

When wage and hours issues are “brushed aside” and the complainants are not respected or taken seriously, the possibility of costly labor complaints rise. Contractors must be aware that with a disgruntled workforce, productivity decreases and safety violations increase. Timely responses and a sincere regard for the workers wage & hour concerns are critical ingredients in avoiding labor complaints, costly audits and associated morale, safety and production issues.

See: Labor Complaint

## **Working Foreman**

Some firms' designate a person as a working foreman. If the working foreman is working with the tools of a trade more than 20% of the time, the foreman must be paid equal to or more than the prescribed wage rate in the contract for the classification of work in which she/he is engaged. If the foreman is only



supervising and not working with the tools of a trade, he/she is no longer subject to Davis Bacon wage rates.

See 20% rule.

## **Zone Pay**

Zone pay is a premium dollar value added to the prevailing wage rate for work conducted away from the amenities of a community or city. Zone pay is NOT a per diem or subsistence pay amount it is only an additional premium added to the wage. Zone pay is always added to the wage rate before any other payroll calculations are completed. The zone in which a project is located is determined prior to the bid letting.

The zone determination process is defined on the first page of the prevailing wage document contained in the bid advertisement or in the final contract.

Only certain classifications of workers are afforded zone pay. Payroll persons should pay close attention to the information on zone pay on the first page of the highway prevailing wage rates contained in each contract.

See: Sample Wage Rates in the Forms Section

## Forms

90% Completion Notification\*  
Additional Classification\*  
Final Labor Certificate\*  
LC-1 Payroll Spot Check\*  
LC-3 Engineer's Check Sheet\*  
Payroll Form – WH 347\*  
Payroll Certification Form  
Statement of Compliance\*  
Special Provisions\*  
Wage Rates (sample)\*

## 90% FORM

TO:

FROM:

Date:

Subject:

Review of payrolls received by this office indicates the CRB has received the following payrolls: (Project Manager complete the last two columns)

Contractor Name	Indicate Prime, sub, or no contract	Payroll Rec'd	Payrolls Missing	All work is done yes/no	All payrolls sent to CRB Yes/no

COMMENTS: The CRB received a notice that the project was 90% complete. That notice triggers a project file review of the payrolls to hasten the final labor certificate upon the projects completion. Please take time to review the attached form and complete the last two columns within 10 working days.

# REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE

CHECK APPROPRIATE BOX

☐

SERVICE CONTRACT

☐

CONSTRUCTION CONTRACT

OMB No.: **9000-0089**  
Expires: **04/30/2005**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Office of Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.

**INSTRUCTIONS:** THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPLICATE, TO THE CONTRACTING OFFICER.

1. TO: ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210			2. FROM: (REPORTING OFFICE)	
3. CONTRACTOR				4. DATE OF REQUEST
5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)
10. SUBCONTRACTOR (IF ANY)				

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: \_\_\_\_\_

DATED: \_\_\_\_\_

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY)	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS
(Use reverse or attach additional sheets, if necessary)		

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE	
16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE

**TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))**

- ☐ THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
- ☐ THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(Send copies 1, 2, and 3 to Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED
--	------------------------------------	----------------

INTER-OFFICE MEMORANDUM  
HUMAN RESOURCES DIVISION – CIVIL RIGHTS BUREAU

To: Lisa Durbin  
Construction Administration Services Engineer

From: Trudy Eaton, Administrative Assistant  
Civil Rights Bureau

Date:

Subject:

Completion Date:

All payrolls required for the above noted project have been received.

Prime Contractor:

Subcontractors:

The Civil Rights Bureau is required to maintain certified payrolls for three years after final voucher.

Cc: James Anderson      Jeff Kirby  
Scott Allen              Judy Bauch

# LABOR COMPLIANCE SPOT CHECK

PROJECT NO. \_\_\_\_\_ DISTRICT \_\_\_\_\_  
 DESIGNATION \_\_\_\_\_ DATE \_\_\_\_\_  
 CONTRACTOR \_\_\_\_\_ INTERVIEWER \_\_\_\_\_  
 PRIME \_\_\_\_\_ SUBCONTRACTOR \_\_\_\_\_

LC-1 MUST BE ATTACHED TO CORRESPONDING PAYROLL  
 INTERVIEWS ARE TO BE CONDUCTED MONTHLY  
 RETAIN ONE COPY FOR YOUR FILES.  
 REFER TO CRB MANUAL, LABOR COMPLIANCE SECTION.

EMPLOYEE NAME	CLASSIFI- CATION	RATE OF PAY	WORK PERFORME D	1. ATTEND EEO MTGS? 2. EEO OFFICER? 3. COMPLAINT FILING? 4. BULLETIN BOARD? 5. BENEFIT PROGRAM?  (CIRCLE IF KNOWN)					Are you employed by another contractor on this project? (If yes, write in name of contractor.)
		OT?*		1	2	3	4	5	
1.				1	2	3	4	5	
2.				1	2	3	4	5	
3.				1	2	3	4	5	
4.				1	2	3	4	5	
5.				1	2	3	4	5	
6.				1	2	3	4	5	
7.				1	2	3	4	5	
8.				1	2	3	4	5	
9.				1	2	3	4	5	
10.				1	2	3	4	5	
11.				1	2	3	4	5	
12.				1	2	3	4	5	
13.				1	2	3	4	5	
14.				1	2	3	4	5	
15.				1	2	3	4	5	
16.				1	2	3	4	5	
17.				1	2	3	4	5	

\* Are you receiving time and a half wages for all work over 40 hours in a workweek?

# ENGINEER'S PAYROLL CHECK SHEET

TO: Civil Rights Bureau  
Montana Dept. of Trans.  
2701 Prospect Ave.  
Helena, MT 59620

PROJECT NUM: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

EPM: \_\_\_\_\_

PAYROLL #: \_\_\_\_\_

PAYROLL PERIOD: FROM \_\_\_\_\_ TO \_\_\_\_\_ ZONE \_\_\_\_\_

- A. CHECK BULLETIN BOARD EACH MONTH.
- B. NOTIFY PRIME CONTRACTOR OF SUBCONTRACTOR PAYROLL PROBLEMS.
- C. SPOT CHECK (LC-1) INTERVIEWS WILL BE CONDUCTED MONTHLY. ATTACH TO CORRESPONDING PAYROLL AND SUBMIT TO CIVIL RIGHTS BUREAU.

	<u>YES</u>	<u>NO</u>
1. Does payroll indicate project number and payroll period covered?	_____	_____
2. Are full names, social security numbers, and home addresses shown (first payroll entry)?	_____	_____
3. Are workers properly classified and codes indicated that correspond to the contract?	_____	_____
4. Has the contractor submitted conversion codes with first payroll, if needed?	_____	_____
5. Is overtime paid at the correct rate?	_____	_____
6. Are the deductions shown allowable and/or authorized?	_____	_____
7. Have apprenticeship papers been provided, if needed?	_____	_____
8. Is Statement of Compliance attached to payroll?	_____	_____
9. Are benefits certified as "bona fide" and plan listed under remarks?	_____	_____
10. Has supplemental payroll been requested for this payroll?	_____	_____

**UNDER NO CIRCUMSTANCES SHOULD ANY PAYROLL BE RETURNED TO A**

**CONTRACTOR FOR CORRECTION!** Any correction necessary must be on a supplemental payroll. This check sheet should be filled out and attached to the FRONT of the payroll being submitted to the Civil Rights Bureau, with one LC-3 per payroll.

**ADDITIONAL COMMENTS:**





Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of Signatory Party) \_\_\_\_\_ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ (Contractor or Subcontractor) \_\_\_\_\_ on the

\_\_\_\_\_ (Building or Work) \_\_\_\_\_; that during the payroll period commencing on the

\_\_\_\_\_ day of \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ (Contractor or Subcontractor) \_\_\_\_\_ from the full

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 40 U.S.C. 276c), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ - in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ - Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	

REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS

	Page
I. General .....	1
II. <b>NONDISCRIMINATION</b> .....	1
III. Nonsegregated Facilities .....	3
IV. Payment of Predetermined Minimum Wage .....	4
V. Statements and Payrolls .....	6
VI. Record of Materials, Supplies, and Labor .....	7
VII. Subletting or Assigning the Contract .....	7
VIII. Safety: Accident Prevention .....	8
IX. False Statements Concerning Highway Projects .....	8
X. Implementation of Clean Air Act and Federal Water Pollution Control Act .....	8
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion .....	9
XII. Certification Regarding Use of Contract Funds for Lobbying .....	11

ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. **GENERAL**

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;  
Section IV, paragraphs 1, 2, 3, 4, and 7;  
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. **NONDISCRIMINATION**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 USC 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not

less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the

discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

## 6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the

employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### 1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of

work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

## **2. Classification:**

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

## **3. Payment of Fringe Benefits:**

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

### **a. Apprentices:**

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau,

withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

**b. Trainees:**

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**c. Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such work week unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

**9. Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

**V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

**VII. SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

#### **VIII. SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

#### **IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

#### **NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

#### **X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.



3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

#### **XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

##### **1. Instructions for Certification – Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction,

without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\*\*\*\*\*

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\*\*\*\*\*

#### **2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49CFR29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

#### **XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

GENERAL DECISION: **MT20030002** 10/07/2005 MT2

Date: October 7, 2005

General Decision Number: **MT20030002** 10/07/2005

Superseded General Decision Number: MT020002

State: Montana

Construction Type: Highway

Counties: Montana Statewide.

#### HIGHWAY CONSTRUCTION PROJECTS

Modification Number      Publication Date

0                      06/13/2003

1                      11/07/2003

2                      10/07/2005

\* SUMT2001-001 09/04/2003

**\*\*ZONE PAY\*\***

CARPENTERS, CEMENTS MASONS, IRON WORKERS, LABORERS, POWER  
EQUIPMENT OPERATORS, TRUCK DRIVERS

The hourly wage rates applicable to each project shall be  
determined by measuring the road miles over the shortest  
practical maintained route from the County Court House of the  
following towns to the center of the job:

BILLINGS, BOZEMAN, BUTTE, GREAT FALLS, HAVRE, HELENA,  
KALISPELL, LEWISTOWN, MILES CITY, MISSOULA

ZONE 1: 0 to 30 miles

ZONE 2: 30 to 60 miles - Base Pay +\$2.20

ZONE 3: Over 60 miles - Base Pay + \$3.20

	Rates	Fringes
Carpenters:		
Carpenter.....	\$ 21.64	6.00
Piledriverman.....	\$ 21.64	6.00
Cement Mason.....	\$ 19.39	6.00
Electricians:		
Area 1.....	\$ 18.74	2.93+3.8%
Area 2.....	\$ 20.13	4.76+3.8%
Area 3.....	\$ 19.98	3.44+3.8%
Area 4.....	\$ 19.84	3.51+3.8%
Area 5.....	\$ 20.54	3.54+3.8%
Area 6.....	\$ 18.02	3.44+3.8%

#### ELECTRICIANS AREA DESCRIPTIONS

AREA 1: Beaverhead, Deer Lodge, Granite, Jefferson, Madison,  
Silver Bow, and Powell Counties

AREA 2: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Treasure, Wibaux, and Yellowstone counties

AREA 3: Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, McCone, Petroleum, Pondera, Phillips, Richland, Roosevelt, Sheridan, Teton, Toole, Valley, and Wheatland Counties

AREA 4: Broadwater, Lewis and Clark, and Meagher Counties

AREA 5: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties

AREA 6: Gallatin, Park, and Sweet Grass Counties

Ironworker

Flathead, Glacier, Lake,

Lincoln, Mineral,

Missoula and Sanders Cos....\$ 22.54           10.99

Remaining Counties.....\$ 21.04           10.87

Laborers:

Group 1.....\$ 15.59           6.00

Group 2.....\$ 18.16           6.00

Group 3.....\$ 18.34           6.00

Group 4.....\$ 19.17           6.00

LABORERS CLASSIFICATIONS

GROUP 1: Flag person

GROUP 2: All General Labor work; Burning Bar; Bucket man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete worker; Curb Machine-Lay Down; Crusher and Batch Plant Worker; Fence Erector; Form Setter; Form Stripper; Heater Tender; Landscaper; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Riprappet; Sealants for Concrete and other materials; Sign Erection, Guard Rail and Jersey Rail; Stake Jumper; Spike Driver; Signalman; Tail Hoseman; Tool Checker and Houseman; Traffic Control worker

GROUP 3: Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzlemen; Jackhammer (Pavement Breaker); Laser equipment; Non-riding Rollers; Pipelayer; Posthole Digger (power); Power Driven Wheelbarrow; Rigger; Sandblaster; Sod Cutter-power; Tampers

GROUP 4: Ashpalt Raker; Cutting Torch; Grade Setter; High-Scaler; Power Saws (Faller & Concrete); Powderman (\$1.00 per hour above Group 4 rate); Rock & Core Drill; Track or Truck mounted Wagon Drill; Welder including Air Arc

Line Construction

Equipment Operator.....\$ 19.16           5.05

Groundman.....\$ 15.40           5.05

Painters:.....\$ 19.55           5.50

Pavement marking and related work. Includes operating marking

and all other equipment and all work involved in traffic marking including removal, surface preparation and application of pavement markings including epoxies, paints, tape, buttons, thermo-plastics and any other products applied for traffic marking purposes and for directing and regulating traffic

#### Power Equipment Operator

Group 1.....	\$ 19.54	6.00
Group 2.....	\$ 20.43	6.00
Group 3.....	\$ 21.19	6.00
Group 4.....	\$ 21.80	6.00
Group 5.....	\$ 22.98	6.00
Group 6.....	\$ 23.58	6.00
Group 7.....	\$ 25.42	6.00

#### POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: A-Frame Truck Crane; Air Compressor; Auto Fine Grader; Belt Finishing Machine; Boring Machine (small); Cement Silo, Crane; Crusher Conveyor, DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form-Grader; Front-end Loader under 1 cu yd; Oiler, Heavy Duty Drills; Pumpman; Oiler (All, except Cranes and Shovels)

GROUP 2: Air Doctor; Backhoe/Excavator/Shovel to & incl 3 cu yd Bit Grinder; Bituminous Paving Travel Plant; Boring Machine, large; Broom, Self-Propelled; Concrete Bucket Dispatcher; Concrete Conveyor; Concrete Finish Machine; Concrete Float and Spreader; Concrete Travel Batchers; Distributor; Dozer, Rubber tired, Push, and Side Boom; Drills, Heavy Duty (all types); Elevating Grader/Gradall; Field Equipment Serviceman; Front-end Loader 1 cu yd to and incl. 5 cu yd; Grade Setter; Hoist/Tugger (All Hydralift & Similar); Industrial Locomotive; Motor Patrol (Except Finish); Mountain Skidder; Oiler, Cranes & Shovels; Pavement Breaker, EMSCO; Power Saw, Self-Propelled; Pugmill; Pumpcrete/ Grout Machine; Punch Truck; Rollers (All except Asphalt Finish and Breakdown); Ross Carrier; Rotomill under 6 ft; Trenching Machine; Washing/Screening Plant

GROUP 3: Asphalt Finish Roller; Asphalt Breakdown Roller; Asphalt Paving Machine; Backhoe/Excavator/Shovel larger than 3 cu yd; Asphalt Screed; Concrete Batch Plant; Cableway Highline; Concrete Curing Machine; Cranes, 24 tons & under; Cranes, Creter; Cranes, Electric Overhead; Concrete Pump; Curb Machine/Slip Form Paver; Finish Dozer; Mechanic/Welder; Pioneer Dozer; Rotomill 6 ft and over; Scraper, Single Engine; Scraper Twin or pulling Belly Dump; Yo Yo Cat Front-end Loader over 5 cu yd;

GROUP 4: Asphalt/Hot Plant Operator; Cranes, 25 tons to 44 tons; Crusher Operator; Finish Motor Patrol; Finish Scraper

#### SPECIAL OPERATORS:

GROUP 5: Cranes, 45 tons to and including 74 tons

GROUP 6: Cranes, 75 tons to and including 149 tons

GROUP 7: Cranes, 150 tons to and including 250 tons; Cranes over 250 tons: add \$1.00 for every 100 tons over 250 tons; Crane, Stiff-Leg or Derrick; Crane, Tower all); Crane, Whirley (all); Helicopter Hoist

Truck drivers:

Group 1.....\$ 16.91           6.00

Group 2.....\$ 21.64           6.00

GROUP 1: Pilot Car

GROUP 2: Combination Truck and Concrete Mixer and Transit Mixer; Dry Batch Trucks; Distributor Driver; Dumpman; Dump Trucks and similar equipment; Dumpster; Flat Trucks; Lumber Carriers; Lowboys; Pickup; Powder Truck Driver; Power Boom; Serviceman; Service Truck/Fuel Truck/Tireperson; Truck Mechanic; Trucks with Power Equipment; Warehouseman, Partsman, Cardex and Warehouse Expeditor; Water Trucks

-----  
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

-----

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

-----

## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the

Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Dept.

Alternative accessible formats of this information will be provided upon request.

For further information call (406) 444-6331 or TTY (800) 335-7592. or by calling Montana Relay at 711